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USES BEFORE THE STATUTE OF USES.

THE Paston Letters (A. D. 1419 to 1506) were mostly written either by lawyers or to lawyers. They were preserved principally because of the determination of one member of the Paston family, who was a lawyer, to save everything that was in writing. They have been freely used by historians as material for the study of social life in England during the Wars of the Roses, but they are of still greater value to the student of legal history for the light which they throw upon the actual practice of the law, at the time when Littleton was at the bar.

The early letters, during the reign of Henry VI, relate to a period when the great nobles had the habit of making forcible entries upon lands of ordinary subjects, without any pretense of title. This habit was one of the causes of the Jack Cade rebellion. The only remedy lay in the power of the Lord Chancellor.

John Paston owned a manor called Gresham. The son of the poet Chaucer had conveyed it to Judge William Paston, the father, and John, who was a lawyer, had maintained peaceable possession of it for many years: Lord Moleyns made a forcible entry upon it. John Paston brought a bill in equity which, somewhat condensed and with its orthography somewhat modernized, is as follows:¹

“Unto the right reverend father in God, and my right gracious Lord, the Cardinal Archbishop of York, Primate and Chancellor of England Beseecheth meekly John Paston, that, whereas Robert Hungerford, Lord Moleyns, late, with force and strength and great multitude of riotous people, to the number of a thousand persons and more, gathered against the King's Peace, in riotous manner, entered upon your beseecher and others enfeofed to his use, in the manor of Gresham, with the appurtenances, in the Shire of Norfolk: which riotous people brake, despoiled and drew down the place of your said beseecher in said town, and drave out his wife and servants there being; and the said manor, after

¹ Paston Letters, Gairdner's Ed., 1895, No. 107.

the said riotous entry kept, with strong hand, in manner of war, as well against your beseecher and his feoffees, as against one of the King's Justices of the Peace in the said shire that came thither to execute the statutes, ordained and provided against such forcible entries and keeping of possessions with force, as it appeareth by record of the said Justice certified into the Chancery, and yet the said Lord Moleyns the said manor keepeth, with force and strength against the form of the said statute.

"Please it your reverend Fatherhood and gracious Lordship, these premises considered, to grant unto your said beseecher for his feoffees, by him to be named, a special assize against the said Lord Moleyns and others of the said riotous people in like form to be named.

"At reverence of God and in way of charity."

The special assize prayed for was a writ of restitution which was granted and Paston restored to possession.

It is to be noticed that the legal title to the manor was held by feoffees to the use of Paston, and a careful reading of the Letters and the papers which accompany them indicates that at the time most of the land in England was so held. The legal title to a manor was usually in the names of a number of feoffees, of whom at least one was a lawyer and one a clergyman. As they held in joint tenancy and as the clergy were very unlikely to take part in any of the wars or rebellions of the period, the property was unlikely to be lost by the *cestui que use*. John de Vere the twelfth Earl of Oxford was executed and John de Vere the thirteenth Earl was granted his life by Edward IV only when he surrendered Mount St. Michael, and yet early in the reign of Henry VII we find him one of the richest nobles in England. The legal title to at least some of the real property of the Vere family was held by the Bishop of Ely, Sir Thomas Montgomery, William Paston, Esq., and three others.²

The number of feoffees was often as great as thirteen. It seems also that such feoffees charged for their services and that they occasionally took strenuous measures to collect their fees is shown by the following letter: ³

² Paston Letters, No. 735.

³ Paston Letters, No. 438.

“Pleaseth your master-ship to wit—that I have been at Burnewyll to receive the rents of the tenants, and I understand by them that Master Jenney was there and warned the tenants that they should pay no money to no man unto the time they had word from him; that he was one of the feoffees of the same manor, of which fee he was behind for two years. Wherefore I can get no money of them.”

It is evident that one of the objects aimed at by the invention of uses was to enable the cestui que use to dispose of his real property by last will which was impossible if he held the legal title. A good illustration of this kind of disposition of land is found in the will of Agnes Paston,⁴ in which she declares “I make and ordain my last will in all the manors, lands, tenements, rents, services, messuages, and places that any person or persons be seized of to my use and behoof, praying and desiring all the persons so feoffed to my use, after this my will, written and sealed under my seal, be shewed unto them, that they will make estate to the persons limited in my said will according.” In fact it was legally possible for the cestui que use to make an oral transfer of the use on his death bed and have that transfer made effective as a nuncupative will.⁵

Any such loose method of conveyancing was bound to produce confusion in title and lead to much litigation. This is well illustrated by the contest over the estate of Sir John Fastolf, which lasted from 1459 to 1476. The Knight, from whom Shakespeare is said to have got at least the name of Sir John Falstaff owned a large number of manors, and a castle in Norfolk called Caister. He was a connection and a client of John Paston, Esq. In 1459 one Dr. Brackley, a somewhat celebrated preaching friar of the period, who was in attendance on Sir John, wrote to Paston to come at once saying: “It is high time, He draweth fast-homeward, and is right-low brought and sore feebled. God bring you soon hither, for I am weary till ye come.”⁶ Paston seems to have arrived before Sir John died and to have begun preparing a draft of a will.⁷

⁴ Paston Letters, No. 553.

⁶ Paston Letters, No. 331.

⁵ Paston Letters, No. 590.

⁷ Paston Letters, No. 332.

This will was never executed but it was claimed by Paston and Brackley that a nuncupative disposition was made,⁸ by which the use of the Castle Caister and all Sir John's real property in Norfolk and Suffolk, and in the City of Norwich, was left to John Paston, subject simply to the establishment at Caister of a college of seven monks and seven poor folks to pray for his soul in perpetuity.

The legal title to all his property was held by a considerable number of feoffees among whom were Sir William Yelverton and John Jenney, both Justices of the Court of King's Bench and both Paston's principal opponents in the contest which followed. This contest was over the genuineness of the nuncupative will. Copies of some of the depositions are among the Paston Letters but it is evident that many of them do not appear. Sir Thomas Howes, an executor, confessed on his death bed that the will did not truly represent Sir John Fastolf's wishes but Dr. Brackley on his death bed in 1468 positively and repeatedly affirmed that it did. John Paston was subjected to long examinations in the Ecclesiastical Court, and was three times imprisoned in the Fleet, possibly for contempt. He died in 1466 soon after his last imprisonment, and if we may judge from the extensive list of food supplies and other expenses at his funeral,⁹ that funeral must have been a very grand one.

John Paston's heir and successor in the contest over the Fastolf property was Sir John Paston, his son, who was a courtier and no lawyer, though apparently well acquainted with legal doctrines. He took part in a tournament in 1467, with one other on the same side as King Edward IV.¹⁰

He seems to have relied principally upon his influence at court to preserve his estate and he lost manor after manor, through forcible entries by the Duke of Suffolk and other great Lords. In 1467 he seems to have obtained in the Court of Audience a decree by the Archbishop of Canterbury, Bishop Waynflete and Lord Beauchamp,¹¹ confirming his title to Caister and a few other manors, and in the same year, there appears a

⁸ Paston Letters, Nos. 333-334.

⁹ Paston Letters, No. 549.

¹⁰ Paston Letters, No. 572.

¹¹ Paston Letters, No. 577.

release by Yelverton, Jenney and other feoffees of Sir John Fastolf.¹²

Shortly after this Sir Thomas Howes seems to have made his deathbed confession and the foregoing settlement was treated as though it had never been made. Possibly, however, the release from Yelverton and others, though it appears among the papers may never have been executed.

At any rate, on October 1, 1468, Yelverton, Jenney and the other feoffees of Sir John Fastolf conveyed the castle of Caister with other manors to the duke of Norfolk.¹³ The Duke seems to have made no attempt to take possession under his deed until August 21, 1469, when he began a regular siege of the castle with an army of 3,000 men. The place was defended by a brother of Sir John who had about twenty personal friends and four professional soldiers to assist him. Sir John remained in London to try to induce the King or some great lord to intervene. But all the nobles seem at this time to have got out of the King's hand. In fact he was for a short time imprisoned by Warwick and the confederate lords. The Duke of Norfolk was a great man and every one hesitated to offend him. And Caister was surrendered, as Sir John's brother described it, "For lack of victual, gunpowder, men's hearts and surety of rescue."¹⁴

Only one of the besieged had lost his life and very few of the besiegers, but the walls of the castle had suffered somewhat from the Duke's artillery. Thus Sir John Paston lost possession.

On July 14, 1470, an agreement appears¹⁵ between Bishop Waynflete and Sir John Paston to terminate all dispute and divide the remaining manors between the Bishop and Paston. As the Bishop was one of the executors in the nuncupative will and took upon himself to establish the college for monks, provided for by the will, and as he treated Paston as the only party interested, it seems that we may assume that the nuncupative will had at last been established as the last will of Sir John Fastolf.

Between July and December, 1470, Edward IV was temporarily deposed and Henry VI restored and so on December 11th we find

¹² Paston Letters, No. 581.

¹³ Paston Letters, No. 658.

¹⁴ Paston Letters, No. 628.

¹⁵ Paston Letters, No. 645.

a release¹⁶ from the Duke of Norfolk to Bishop Waynflete, as executor of the will of Sir John Falstolf, of Caister, and the other property conveyed to him by Yelverton and others, on the ground that the Duke had learned that "the said bargain was made contrary to the will of the said Sir John Fastolf."

At the same time he notified his servants to depart out of Caister.¹⁷

But by April 1471 Edward had become King again and the Duke of Norfolk, without any pretense of right, suddenly re-entered on Caister on Sunday June 23rd. He continued in possession until January, 1476, when he suddenly died. As he left no male descendant, he was the last of the Mowbrays to hold the title which soon thereafter went to the Howard family where it has ever since remained.

Naturally Sir John Paston did not hesitate to reënter on Caister. In fact he entered so promptly as to be criticised for lack of respect to the dead Duke. Finally on June 30, 1476, he wrote to his brother:¹⁸ "Blessed be God. I have Caister at my will." Thus ended the long controversy. The Paston family removed to the castle and a representative of it was later raised to the peerage, with the title Earl of Yarmouth. This controversy will illustrate the danger, to the cestui que use, especially in time of public disturbance, that a hostile feoffee to use would create trouble and confusion in the title. The controversy attracted a good deal of public attention at the time and may have been remembered when not many years later Henry VIII proposed to Parliament the Statute of Wills and the Statute of Uses.

The former by giving power to dispose of the legal title to real property by writing at death gave to the ordinary subject all the real benefit which he had derived from uses, while the latter not only simplified titles and prevented quarrels between feoffees to uses and cestui que use, but gave the King a powerful weapon against any feudal lord who dared rebel against him.

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¹⁶ Paston Letters, No. 658.

¹⁷ Paston Letters, No. 657.

¹⁸ Paston Letters, No. 779.